

(b) *Electric program.* In determining which applicant activities related to a proposed action can proceed prior to completion of the environmental review process, RUS must determine, among other matters that:

(1) The activity shall not have an adverse environmental impact and shall not preclude the search for other alternatives. For example, purchase of water rights, optioning or transfer of land title, or continued use of land as historically employed will not have an adverse environmental impact. However, site preparation or construction at or near the proposed site (e.g. rail spur) or development of a related facility (e.g. opening a captive mine) normally will have an adverse environmental impact.

(2) Expenditures are minimal. To be minimal, the expenditure must not exceed the amount of loss which the applicant could absorb without jeopardizing the Government's security interest in the event the proposed action is not approved by the Administrator, and must not compromise the objectivity of RUS environmental review. Notwithstanding other considerations, expenditures equivalent to up to 10 percent of the proposed action's cost normally will not compromise RUS objectivity. Expenditures for the purpose of producing documentation required for RUS environmental review are excluded from this limitation.

[63 FR 68655, Dec. 11, 1998, as amended at 68 FR 45159, Aug. 1, 2003]

#### § 1794.16 Tiering.

It is the policy of RUS to prepare programmatic level analysis in order to tier an EIS and an EA where:

- (a) It is practicable, and
- (b) There will be a reduction of delay and paperwork, or where better decision making will be fostered (40 CFR 1502.20).

#### § 1794.17 Mitigation.

(a) *General.* In addition to complying with the requirements of 40 CFR 1502.14(f), it is RUS policy that a discussion of mitigative measures essential to render the impacts of the proposed action not significant will be included in or referenced in the Finding

of No Significant Impact (FONSI) and the Record of Decision (ROD).

(b) *Water and waste program.* (1) Mitigation measures which involve protective measures for environmental resources cited in this part or restrictions or limitations on real property located in the service areas of the proposed action shall be negotiated with applicants and any relevant regulatory agency so as to be enforceable. All mitigation measures incorporating land use issues shall recognize the rights and responsibilities of landholders in making private land use decisions and recognize the responsibility of governments in influencing how land may be used to meet public needs.

(2) Mitigation measures shall be included in the letter of conditions.

(3) RUS has the responsibility for the post approval construction or security inspections or monitoring to ensure that all mitigation measures included in the environmental documents have been implemented as specified in the letter of conditions.

§§ 1794.18–1794.19 [Reserved]

### Subpart C—Classification of Proposals

#### § 1794.20 Control.

*Electric and telecommunications programs.* For environmental review purposes, RUS has identified and established categories of proposed actions (§§ 1794.21 through 1794.25). An applicant may propose to participate with other parties in the ownership of a project where the applicant(s) does not have sufficient control to alter the development of the project. In such a case, RUS shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposed project prior to determining its classification. Where the applicant proposes to participate with other parties in the ownership of a proposed project and all applicants cumulatively own:

- (a) Five percent or less of a project is not considered a Federal action subject to this part;
- (b) Thirty-three and one-third percent or more of a project shall be treated in its usual category;

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(c) More than five percent but less than 33⅓ percent of a project, RUS shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposal such that RUS's action will be considered a Federal action subject to this part. Consideration shall be given to such factors as:

- (1) Whether construction would be completed regardless of RUS financial assistance or approval;
- (2) The stage of planning and construction;
- (3) Total participation of the applicant;
- (4) Participation percentage of each utility; and
- (5) Managerial arrangements and contractual provisions.

### **§ 1794.21 Categorically excluded proposals without an ER.**

(a) *General.* Certain types of actions taken by RUS do not normally require an ER. Proposed actions within this classification are:

- (1) The issuance of bulletins and information publications that do not concern environmental matters or substantial facility design, construction, or maintenance practices;
- (2) Procurement activities related to the operation of RUS;
- (3) Personnel and administrative actions; and
- (4) Repairs made because of an emergency situation to return to service damaged facilities of an applicant's system.

(b) *Electric and telecommunications programs.* Applications for financial assistance for the types of proposed actions listed in this paragraph (b) normally do not require the submission of an ER. These types of actions are subject to the requirements of § 1794.31. Applicants shall sufficiently identify all proposed actions so their proper classification can be determined. Detailed descriptions shall be provided for each proposal noted in this section. RUS normally requires additional information in addition to a description of what is being proposed, to ensure that proposals are properly classified. In order to provide for extraordinary circumstances, RUS may require development of an ER for proposals listed in

this section. Proposed actions within this classification are:

- (1) Purchase of land where use shall remain unchanged, or the purchase of existing water rights where no associated construction is involved;
- (2) Additional or substitute financial assistance for proposed actions which have previously received environmental review and approval from RUS, provided the scope of the proposal and environmental considerations have not changed;
- (3) Rehabilitation or reconstruction of transportation facilities within existing rights-of-way (ROW) or generating facility sites. A description of the rehabilitation or reconstruction shall be provided to RUS;
- (4) Changes or additions to microwave sites, substations, switching stations, telecommunications switching or multiplexing centers, buildings, or small structures requiring new physical disturbance or fencing of less than one acre (0.4 hectare). A description of the additions or changes and the area to be impacted by the expansion shall be provided to RUS;
- (5) Internal modifications or equipment additions (e.g., computer facilities, relocating interior walls) to structures or buildings;
- (6) Internal or minor external changes to electric generating or fuel processing facilities and related support structures where there is negligible impact on the outside environment. A description of the changes shall be provided to RUS;
- (7) Ordinary maintenance or replacement of equipment or small structures (e.g., line support structures, line transformers, microwave facilities, telecommunications remote switching and multiplexing sites);
- (8) The construction of telecommunications facilities within the fenced area of an existing substation, switching station, or within the boundaries of an existing electric generating facility site. A description of the facilities to be constructed shall be provided to RUS;
- (9) SCADA and energy management systems involving no new external construction;